BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

KEVIN MCDOWELL	}
Claimant VS.	Dooket No. 197 252
FRITO-LAY, INC.) Docket No. 187,352
AND	
SELF INSURED Insurance Carrier	

ORDER

Claimant appeals from a Preliminary Hearing Order dated December 8, 1994, wherein Administrative Law Judge James R. Ward denied medical treatment to the claimant. The Order of the Administrative Law Judge does not specify the reason behind this denial.

ISSUES

- (1) Whether claimant suffered accidental injury arising out of and in the course of his employment;
- (2) Is the claimed accident a compensable claim?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

- K.S.A. 44-551(b)(2)(A) provides that the Appeals Board shall not review a pending preliminary hearing order entered by the Administrative Law Judge unless it is alleged the Administrative Law Judge exceeded his jurisdiction in granting or denying the requested relief.
- K.S.A. 44-534a allows appeals from preliminary hearings with regard to the following disputed issues which are to be considered jurisdictional and subject to review by the Appeals Board:
 - (1) Whether the employee suffered an accidental injury;
 - (2) Whether the injury arose out of and in the course of the employee's employment;
 - (3) Whether notice is given or claim timely made;
 - (4) Whether certain defenses apply.

In the instant case the Administrative Law Judge denied claimant's request for medical treatment. The Order does not specify the reason behind this denial. There is evidence in the file to indicate the denial could stem from the Judge's finding the claimant's accidental injury did not arise out of and in the course of the claimant's employment. There is also information in the file to indicate the Judge's denial could stem from a finding not contained in the jurisdictional items listed in K.S.A. 44-534a.

The Appeals Board is unable to ascertain from the record the basis for the denial of benefits in this matter. As such the Appeals Board must remand this matter back to the Administrative Law Judge for further findings, specifically the basis for the denial of benefits, in order for the Appeals Board to make a decision regarding its jurisdictional basis for hearing this appeal.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this matter be remanded back to Administrative Law Judge James R. Ward for further findings consistent with this decision. The Appeals Board does not retain jurisdiction over this proceeding. Should either party be aggrieved by any amended order rendered by the Administrative Law Judge in this matter, the appropriate procedure for filing a new application for review by the Appeals Board must be filed within the statutorily set guidelines.

Dated this day of M	arch, 1995.
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

c: Roger D. Fincher, Topeka, KS Matthew J. Stretz, Kansas City, MO James R. Ward, Administrative Law Judge George Gomez, Director

IT IS SO ORDERED.